

E-FILED on 07/31/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STEVE TRACHSEL; SUN CITY TOWERS,
LLC; THOMAS CIRrito; ATOCHA LAND,
LLC; MICHAEL CIRrito; and CIRrito
HOLDINGS, LLC,

Plaintiffs,

v.

RONALD BUCHHOLZ; CHARICE
FISCHER; RDB DEVELOPMENT, LLC;
SOLOMON CAPITAL, INC.; JONATHON
VENTO; GRACE CAPITAL, LLC dba
GRACE COMMUNITIES; DONALD
ZELEZNAK; Z-LOFTS, LLC; ZELEZNAK
PROPERTY MANAGEMENT, LLC dba
KELLER WILLIAMS REALTY, INC.; and
DOES 1 through 50,

Defendants.

No. C-08-02248 RMW

ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL

[Re Docket No. 153]

The complaint in this action alleges that defendants created a real estate scheme to defraud plaintiffs, along with other persons and entities, of tens of millions of dollars of invested securities.

Plaintiffs' attorneys from Ropers, Majeski, Kohn, and Bentley ("Ropers Majeski") now move to withdraw as counsel. Defendants have filed a statement of non-opposition. Plaintiffs have filed nothing in response. For the following reasons, the court grants the motion to withdraw.

I. BACKGROUND

The relationship between Ropers Majeski and plaintiffs is governed by a retainer agreement executed by both parties ("the Agreement"). Declaration of Jesshill E. Love ¶ 2 (hereinafter "Love Decl."). That agreement provides that either party may terminate the attorney-client relationship "at any time, with or without cause . . . and [plaintiffs] agree to allow [Ropers Majeski] to withdraw its representation of [plaintiffs], without the necessity of a motion before the court." Def.'s Mot. to Withdraw as Counsel of Record 2:23-25. According to Mr. Love's declaration, communication between plaintiffs and Ropers Majeski has broken down over the past month, with plaintiffs failure to bring their account current and to respond to correspondence. Love Decl. ¶¶ 3-4.

II. ANALYSIS

Under the district's local rules, counsel may not withdraw without a court order. Civil L.R. 11-5(a). The court applies California's Rules of Professional Conduct to determine whether withdrawal is proper. *E.g., Cal. Native Plant Soc'y v. U.S. E.P.A.*, 2008 WL 4911162, *1 (N.D. Cal. Nov. 14, 2008); *Elan Transdermal Ltd. v. Cygnus Therapeutic Sys.*, 809 F. Supp. 1383, 1387 (N.D. Cal. 1992). Pursuant to such rules, an attorney may seek to withdraw if the client "breaches an agreement or obligation to the member as to expenses or fees." Cal. Rule of Prof. Conduct 3-700(C)(1)(f). An attorney may also seek withdraw if the client's conduct renders it unreasonably difficult for the attorney to represent the client effectively. *Id.* at (1)(d).

Mr. Love provides two justifications for Ropers Majeski's motion to withdraw. First, Mr. Love states that plaintiffs are in arrears on payments and have not offered any assurances that payments would be forthcoming. Love Decl. ¶ 4. This is evidence of a breach of an agreement or obligation as to expenses or fees. Second, Mr. Love states that communication with plaintiffs has broken down, with plaintiffs failing to respond to correspondence. Love Decl. ¶ 3. A client's lack of communication makes it unreasonably difficult for the attorney to represent the client effectively. Ropers Majeski has notified plaintiffs and its corporate counsel of its intent to withdraw as counsel. Thus, good cause exists for Ropers Majeski's motion to withdraw, and the court grants the motion.

Plaintiffs Michael Trachsel, Thomas Cirrito, and Michael Cirrito, as individuals, may appear *pro se*, but plaintiffs Sun City Towers, LLC, Atocha Land, LLC, and Cirritos Holdings, LLC, as


incorporated entities, may not appear *pro se*. Civil L.R. 3-9(b). Sun City Towers, LLC, Atocha Land, LLC, and Cirritos Holdings, LLC, should promptly retain counsel.

III. ORDER

For the foregoing reasons, the motion to withdraw is granted. Sun City Towers, LLC, Atocha Land, LLC, and Cirritos Holdings, LLC, shall have until August 14, 2009 to retain new counsel and have their new counsel file a notice of appearance. Until new counsel is retained, any papers shall be served on plaintiffs at the following addresses:

STEVE TRACHSEL	1225 Koch Lane San Jose, CA 95125
SUN CITY TOWERS, LLC	Steve Trachsel 1225 Koch Lane San Jose, CA 95125
THOMAS CIRRITO	9163 Old Dominion Drive McLean, VA 22102
ATOCHA LAND, LLC	Thomas Cirrito 9163 Old Dominion Drive McLean, VA 22102
CIRRITO HOLDINGS, LLC	Thomas Cirrito 9163 Old Dominion Drive McLean, VA 22102
MICHAEL CIRRITO	3314 R Street NW Washington, DC 20007

DATED: 07/31/09


RONALD M. WHYTE
United States District Judge

Notice of this document has been electronically sent to:

Counsel for Plaintiffs:

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Counsel for Defendants Jonathan Vento; Grace Capital, LLC; Donald Zeleznak; Z-Lofts, LLC; Zeleznak Property Management, LLC:

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Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

Dated: 07/31/09

JAS

Chambers of Judge Whyte